

SEARCH WARRANT SEARCHES

PREREQUISITES FOR SEARCH WARRANT

PROBABLE CAUSE

PROBABLE CAUSE DEFINITION

Both Amendment IV of the U.S. Constitution; and Article I Section 11 of the Indiana Constitution provide that warrants must be issued based upon probable cause.

The basic test for determining the sufficiency of probable cause is whether given all of the circumstances, there is a fair probability that contraband will be found in a particular place.

PROBABLE CAUSE is a flexible, common-sense standard. It merely requires that the facts known warrant a man of reasonable caution in the belief that contraband or stolen property or evidence of a crime will be found on the premises to be searched.

PROBABLE CAUSE requires that the thing searched for is probably in the place to be searched at the present time.

Illinois v. Gates, 462 U.S. 213, 103 S. Ct. 2317 (1983)

- The task of the issuing magistrate [when a search warrant is sought] is simply to make a practical, common-sense decision whether, given all the circumstances set forth in the affidavit there is a fair probability that contraband or evidence of crime will be found in a particular place.

SOURCES OF INFORMATION FOR PROBABLE CAUSE

“...[N]o warrant for search...shall be issued until there is filed with the judge an affidavit:

- (3) setting forth the facts then in the knowledge of the affiant or information based on hearsay, constituting the probable cause.”
I.C. 35-33-5-2(a)(3)

Illinois v. Gates, 462 U.S. 213, 103 S. Ct. 2317 (1983)

- While an informant’s veracity, reliability and basis of knowledge are still highly relevant, they are no longer separate and independent requirements to be met.

- These factors are closely intertwined issues to consider in determining probable cause.
- A deficiency in one prong may be compensated for by a strong showing as to the others in determining the overall reliability of hearsay information.
- Corroboration of the details of an informant's tip by independent police work is of significant value.

TOTEM POLE HEARSAY

When based on hearsay, the affidavit must either:

- (1) contain reliable information establishing the credibility of the source and of each of the declarants of the hearsay and establishing that there is a factual basis for the information furnished; or
- (2) contain information that establishes that the totality of the circumstances corroborates the hearsay."

I.C. 35-33-5-2(b)

HEARSAY INFORMANTS

Pawloski v. State, 380 N.E.2d 1230 (Ind. Sup. Ct. 1978)

- There are two categories of informants:
 - (1) Professional informants and anonymous tipsters, and
 - (2) Cooperative citizens.
- The cooperative citizens' category includes victims of crime, eyewitnesses to criminal activity and responsible citizens who decide to provide information out of a spirit of good citizenship and a desire to assist law enforcement officers in solving crime.
- Cooperative citizens are presumed reliable unless circumstances exist that cast suspicion upon their reliability.
- Corroboration is necessary when an officer is relying on the statement of a professional informant or anonymous tipster.

PROFESSIONAL INFORMANTS AND ANONYMOUS TIPSTERS

TRACK RECORD OF RELIABLE INFORMATION

Membres v. State, 851 N.E.2d 990 (Ind. Ct. App. 7/31/06), *trans. granted* (1/18/07)

- The police got their information regarding the defendant's drug usage from a confidential informant who told the police that he had seen another suspected drug dealer in Membres' residence and that the informant was

“pretty sure they were selling marijuana.” The informant did not specify the quantity of marijuana, but did tell the deputy to whom he spoke that he suspected it was in excess of twenty pounds.

- The officer represented that he had used this informant previously, but could not remember exactly how many convictions had resulted from the past information provided. The deputy believed it was more than three times. The officer represented that he had never used this informant previously as the basis for a search warrant.
- The confidential informant did not provide any information regarding a specific, impending crime or any information that could be corroborated by the police.
- The information presented regarding the confidential informant used in this case, was not sufficient to establish the credibility of the informant.
- While no precise credibility ratio need be shown, providing credible information three or more times out of forty or fifty times is not sufficient.
- The Court of Appeals therefore concluded that the information given by the informant was lacking in indicia of reliability. The credibility of the informant was not established and was not sufficient to support the articulable, individualized suspicion required to conduct a search of the defendant’s trash.
- Good faith exception did not save this seizure. [See below.]
- NOTE: Transfer has been granted.

DECLARATIONS AGAINST PENAL INTEREST

Snover v. State, 837 N.E.2d 1042 (Ind. Ct. App. 11/30/05)

- Defendant Snover claimed that the affidavit utilized in his case did not contain probable cause because the police failed to corroborate the informant’s hearsay or demonstrate his credibility.
- I.C. 53-33-5-2 requires that when based on hearsay, an affidavit must either contain reliable information establishing the credibility of the source of each of the declarants of the hearsay and establishing that there is a factual basis for the information furnished; or contain information that establishes that the totality of the circumstances corroborates the hearsay.
- The credibility of an informant for purposes of (b)(1) can be established by declarations against penal interest.
- To qualify as statements against penal interest, the statements must have so far tended to subject the declarant to civil or criminal liability that a reasonable person in the declarant’s position would not have made the statement.
- Snover argued that the informant’s statement in his case was not against the informant’s penal interest.
- The informant was arrested on an outstanding warrant. During a subsequent search incident to arrest, drugs were found in the informant’s

car. After the police had already found the drugs, the informant volunteered the information that Snover was his source.

- The informant did not implicate himself in any additional crimes by revealing the identification of his alleged supplier. Accordingly, his statement was not against his penal interest and thus did not demonstrate he was a credible source of information.
- Nor did the other information in the affidavit demonstrate the informant's credibility. Reporting the defendant's correct address is not indicative of having any inside information. Police made no attempt to corroborate the information provided that Snover had additional drugs in his bedroom. The only other information provided was evidence of a four-month-old report from an unnamed confidential source indicating that Snover was selling meth from his residence.
- While stale information alone may not support probable cause, it may be considered as part of the totality of the circumstances creating probable cause.
- In this case, no evidence was presented by which the issuing judge could have determined that the confidential informant was credible. Accordingly, the information from the confidential informant had no value for determining whether probable cause existed to issue a search warrant.
- Because the affidavit did not demonstrate the credibility of either the principle informant or the confidential informant and did not contain other information corroborating their reports, probable cause did not exist to support issuing the search warrant for Snover's house. The issuing judge erred to the extent that he so found, the Court of Appeals said.
- The good faith exception permitted the evidence seized to be introduced into evidence. [See below.]

State v. Spillers, 847 N.E.2d 949 (Ind. Sup. Ct. 5/23/06)

- The Indiana Constitution, the U.S. Constitution, and I.C. 35-33-5-2 each provide details regarding the information that must be contained in an affidavit for a search warrant.
- Trustworthiness of hearsay for purposes of proving probable cause can be established in a number of ways. Examples include:
 - The informant has given correct information in the past;
 - Independent police investigation corroborates the informant's statements;
 - Some basis for the informant's knowledge is demonstrated; or
 - The informant predicts conduct or activity by the suspect that is not ordinarily easily predicted.

Jaggers v. State, 687 N.E.2d 180, 182 (Ind. 1997)
- These examples, however are not exclusive.
- One such consideration is whether the informant has made a declaration against penal interest.

- There was no information presented in this case that the informant had given the police correct information in the past. Independent police investigation did confirm the informant's allegations concerning Spillers' address and the make and model of Spiller's car. These facts were, however, readily available to the general public.
- These statements, the Supreme Court concluded did nothing to corroborate the informant's assertion that Spillers was the source of the drugs found in Spillers' home.
- As for demonstrating the basis of the informant's knowledge that Spillers possessed drugs, the informant alleged Spillers was his drug source.
- Although it is true that a statement that the event was observed firsthand entitles a tip to greater weight than it would otherwise be given, the assertions in this case carried little weight in that there was no corroboration of the informant's claim.
- Absent some basis for concluding that the informant was a credible source, his uncorroborated hearsay would not have enabled a neutral and detached magistrate to assess the credibility of the informant's alleged first-hand knowledge.
- Although statements against penal interest can furnish a sufficient basis for establishing the credibility of an informant within the meaning of I.C. 35-33-5-2(b)(1), here, by contrast, the informant was caught "red-handed" with drugs in his possession before he named his supplier.
- Although the informant admitted committing additional crimes of possession of cocaine, his tip was less a statement against his penal interest than an obvious attempt to curry favor with the police. His decision to reveal his source to police did not subject him to any additional criminal liability.
- The Supreme Court concluded that under the circumstances the informant's declarations were not against his penal interest and did not demonstrate that the informant was a credible source of information.
- The testimony before the issuing judge did not demonstrate the credibility of the informant and did not reveal other information corroborating the informant's hearsay statements. Even affording significant deference to the issuing judge's determination, the Supreme Court concluded that probable cause did not exist to support issuing a warrant to search Spillers' residence.
- The good faith exception was found to apply in this case. [See below.]

Hirshey v. State, 852 N.E.2d 1008 (Ind. Ct. App 8/23/06)

- I.C. 35-33-5-2(b) lays out special requirements for probable cause affidavits based on hearsay. When based on hearsay, the affidavits must either:
 - Contain reliable information establishing the credibility of the source and of each of the declarants of the hearsay and establishing that there is a factual basis for the information furnished; or

- Contain information that establishes that the totality of the circumstances corroborates the hearsay.
- In this case, the affidavit was based on hearsay statements, but the affiant did not establish the credibility of the witness making those statements or corroborate her statements.
- The State argued that probable cause existed because the declarant's statements were against her penal interests.
- The Supreme Court earlier held that declarations against penal interest can furnish sufficient basis for establishing the credibility of an informant within the meaning of I.C. 35-33-5-2(b)(1)
- In cases in which the courts have found statements to be against penal interest, the declarants have potentially exposed themselves to greater criminal liability.
- In this case, the hearsay declarant had already been arrested for dealing methamphetamine, a Class A Felony, and her statements did not tend to expose her to any greater criminal liability.
- In that the declarant's statements were not against her penal interest, and that there were no other indications that her statements were reliable, the Court of Appeals held that the search warrant issued in this case lacked probable cause.
- The good faith exception did not save this search warrant. [See below.]
- This case also addresses the issue of the consent given by the defendant to the search of his garage. The Court held that the consent was voluntarily given and that the scope of the search did not go beyond the consent given.

BASIS OF INFORMANT'S KNOWLEDGE

State v. Fridy, 842 N.E.2d 835 (Ind. Ct. App. 2/20/06)

- After he was charged, the defendant filed a motion to suppress arguing that his rights under the Fourth Amendment and Article I Section 11 had been violated. Fridy alleged that no probable cause supported the search of his residence because the search warrant issued was based primarily on the hearsay statements of two unnamed informants.
- The defendant also filed a motion to compel disclosure of the informants' names and addresses.
- The probable cause affidavit said that the informant's statements were reliable because they were made against penal interest. The defendant argued that the reliability of the informants could not be confirmed without knowing their identities and in what way their statements were against penal interest. The trial court ordered disclosure of the information requested.
- The trial court granted Fridy's motion to suppress based upon the State's blatant non-compliance with the trial court's order requiring it to reveal informants' identities.

- Uncorroborated hearsay from a source whose credibility is itself unknown, standing alone, cannot support a finding of probable cause to issue a search warrant.
- The probable cause affidavit in this case provided that the statements of two individuals searched were reliable because they were based on personal knowledge and made against their penal interests. Information obtained from the residence, its occupant and the presence of marijuana were confirmed through a controlled delivery, statements by the landlord and observations of law enforcement.
- Indiana Courts have repeatedly discussed the types of corroborating information needed to overcome the hearsay hurdle. In this case, the police provided sufficient corroboration to overcome that hurdle and establish probable cause to issue a search warrant. There was no reason to establish whether the statements were against the penal interests of the informants, in light of the police work that corroborated the informants' statements.
- Had the trial court omitted from its probable cause determination all evidence that arose solely from the informants' uncorroborated hearsay, (an appropriate remedy), the trial court could have both sanctioned the State for non compliance and still found sufficient corroborating evidence of probable cause to support the search warrant, the Court of Appeals said.
- The Court of Appeals found that the trial court erred in granting the defendant's motion to suppress, and reversed and remanded for further proceedings.

Ramsey v. State, 853 N.E.2d 491 (Ind. Ct. App 9/1/06)

- Some of the information the officer in this case received regarding their investigation came from information that a confidential informant received from an unnamed person.
- I.C. 35-33-5-2(b) requires that an affidavit based on hearsay information provided by a confidential informant must either:
 - Contain reliable information establishing the credibility of the source and of each of the declarants of the hearsay and establishing that there is a factual basis for the information furnished; or
 - Contain information that establishes that the totality of the circumstances corroborates the hearsay.
- Trustworthiness of hearsay for purposes of probable cause can be established in a number of ways, including, but not limited to:
 - The informant has given correct information in the past;
 - Independent police investigation corroborates the informant's statements;
 - Some basis for the informant's knowledge is shown; or
 - The informant predicts conduct or activities by the suspect that are not ordinarily easily predicted.

Jaggers v. State, 687 N.E.2d 180, 183 (Ind. 1997)

- Declarations against penal interest can furnish sufficient basis for establishing the credibility of a confidential informant.
- The affiant testified that the confidential informant in this case provided statements against the confidential informant's penal interest; that the CONFIDENTIAL INFORMANT testified based upon the confidential informant's own personal knowledge, not things in someone else's knowledge; and that the affiant was able to corroborate the CONFIDENTIAL INFORMANT's description of the interior of the defendant's residence.
- The Court held that these factors were sufficient to establish the credibility of the confidential informant.
- The Court of Appeals held that the trial court did not error in admitting the evidence obtained during the controlled buys and from the search of the defendant's house.

Ware v. State, 859 N.E.2d 708 (Ind. Ct. App 1/9/07) *reh'g denied*

- The United States Supreme Court had held that uncorroborated hearsay from a source of unknown credibility, standing alone, is insufficient to support a finding of probable cause and the issuance of a search warrant.
- Independent police investigation corroborating an anonymous informant's statements will establish the trustworthiness of the hearsay for purposes of establishing probable cause.
- The confirmation of easily obtained facts and conditions existing at the time of the tip, however, are insufficient to establish an informant's credibility.
- Indiana courts have found that confirming merely that a suspect lives in a residence and drives the vehicle identified by the informants is not adequate to establish the credibility of that informant. Such confirmation does not support a finding of probable cause.
- In this case, much of the information provided was confirmed by the police, including Ware's identification by surveillance, and information gained through cell phone records.)The informant knew Ware's cell phone number.)
- Although the Court acknowledged that the information contained in this anonymous tip may have been slightly more specific than the information contained in tips in other cases in which the courts did not find the information provided sufficient. The Court did not have to decide whether the anonymous tip in this case, standing alone, provided enough evidence to constitute probable cause., however
- The affidavit also said that the information provided was corroborated by the police. Taken together, these corroborated facts constituted sufficient evidence to support the magistrate's determination that there was a fair probability that evidence of a crime would be found in Ware's house and vehicle.

- The totality of the circumstances provided sufficient evidence to establish the reliability of the anonymous informant's statement.
- The Court of Appeals concluded that the information contained in the affidavit, as a whole, corroborated the anonymous informant's statement and provided sufficient evidence to support the magistrate's probable cause determination.
- The defendant also argued that by excluding evidence that suggested that someone else was originally identified as the suspect in the shootings under investigation, the magistrates' probable cause determination was affected.
- Cases have instructed that where the police learn of new information after receiving a search warrant, but before executing it, the magistrate must be made aware of any material new or correcting information.
- A probable cause affidavit must include all material facts, which include those that cast doubt on the existence of probable cause.
- When the State fails to include a material term in its application, the court on review will determine the validity of the warrant by considering both the omitted information and the information contained in the affidavit.
- When the State omits information from a probable cause affidavit, in order for the warrant to be invalid the defendant must show:
 - The police omitted facts with intent to make, or in reckless disregard of whether they thereby made the affidavit misleading; and
 - if the affidavit disclosed had disclosed the omitted information the affidavit would not have been sufficient to support a finding of probable cause.
- In this case, the affiant testified at the suppression hearing that at the time he completed the affidavit he knew that the person first identified was not a credible suspect for a number of reasons.
- Ware failed to demonstrate that the affiant omitted the identification of the first suspect with intent to, or with reckless disregard of whether the omission would make the affidavit misleading. The defendant failed to satisfy the first prong set forth above.
- It is not practical for the police to include every piece of information relating to an investigation in a probable cause affidavit. Ware did not demonstrate that the affiant in this case excluded material information from the affidavit he prepared, nor that had the information been included the affidavit would have not put forth probable cause.
- The Court of Appeals concluded that it could not say that the search warrant in this case was invalid. The trial court was determined to have properly admitted evidence obtained pursuant to the search warrant issued and executed.

State v. Foy, ____ N.E.2d ____ (Ind. Ct. App 3/19/07) (N. 68 A05- 0605-CR-235)

- This case, the Court of Appeals concluded, was wholly dissimilar to cases involving anonymous or confidential, unnamed informants in which cases the reliability of hearsay information is often dubious.
- In this case, the hearsay came from law enforcement officers, emergency and medical professionals, and someone in the alleged victim's home who called 911 seeking help rather than to report criminal activity.
- The probable cause affidavit showed that the 911 caller's statements were corroborated by further police investigation which demonstrated the trustworthiness of the information provided. Further, the information the caller provided was based upon the caller's personal observation. Thus, this hearsay could not be characterized as uncorroborated and the trustworthiness of the hearsay was sufficiently established.
- It is also well settled that police officers may rely upon dispatches from their own and other departments.
- The affidavit in this case was also based upon information provided by other officers whom the affiant referred to as "first responders." The existence of probable cause is determined upon the basis of the collective information known to the law enforcement organization as a whole. The first responders personally observed the defendant at his residence and therefore this hearsay also was sufficiently trustworthy.
- Finally, the affidavit was based upon statements made by emergency and ambulance personnel. The basis of their statements was also their personal observations and conclusions drawn therefrom. Trustworthiness of these statements was also demonstrated.

PREREQUISITES FOR A SEARCH WARRANT

DESCRIPTION OF LOCATION TO BE SEARCHED

I.C. 35-33-5-2

DESCRIPTION OF PROPERTY SOUGHT

I.C. 35-33-5-2(a)(1)(A)

Except as provided in section 8 of this chapter, no warrant for search or arrest shall be issued until there is filed with the judge an affidavit:

- (1) particularly describing:
 - (A) the house or place to be searched and the things to be searched for; or
 - (B) particularly describing the person to be arrested;
- (2) alleging substantially the offense in relation thereto and that the affiant believes and has good cause to believe that:
 - (A) the things that are to be searched for are there concealed; or
 - (B) the person to be arrested committed the offense;...

State v. Foy, ___ N.E.2d ___ (Ind. Ct. app 3/19/07) (N. 68A05-0605-CR235)

- Both the U.S. and Indiana Constitutions require that a search warrant describe both the place to be searched and the items to be seized.
- A warrant conferring upon the executing officer unbridled discretion regarding the items to be searched for is invalid.
- While items to be searched for and seized must be described with some specificity, an exact description is not required.
- In practice, courts have demanded that the executing officers be able to identify the things to be seized with reasonable certainty and that the warrant description be as particular as circumstances permit.
- In this case, the warrant authorized search of the residence, out buildings and motor vehicles located at the specified address as well as the person of Robert For for any and all trace evidence.
- The defendant argued that the phrase “trace evidence” was too general because the phrase is without limitation as to the type of evidence referred to or the offense being investigated.
- The Court found that although the search warrant executed in this case did not specifically state that it was being issued as part of a murder investigation, a true and correct copy of the affidavit was attached to it.
- The Court looked at an earlier Indiana Supreme Court case and cases from other jurisdictions that discussed the seizure of trace evidence. Applying the standards set forth in those opinions, the Court found the search warrant in this case was not invalid as a general warrant.
- The warrant confined the search to Foy and his residence and outbuildings and vehicles and permitted seizure of any and all trace evidence that might be relevant in determining the cause of Diane Foy’s death within the context of a murder investigation.
- The circumstances of this case and the nature of the crime under investigation, the Court found, helped to define the parameters of relevant evidence, thus satisfying the particularity requirement.
- If officers are to be confined to the description in the warrant, reasonable latitude must be allowed in describing the items sought. So long as the description is as specific as the circumstances of the particular case permit, and probable cause is shown, the warrant will be upheld. To hold otherwise would be to lose all touch with reality and totally defeat the policy of encouraging the use of search warrants.

OBTAINING THE SEARCH WARRANT

AFFIDAVIT OR SWORN TESTIMONY

State v. Brown, 840 N.E.2d 411 (Ind. Ct. App. 1/17/06)

- I.C. 35-33-5-8 says that a judge may issue a search warrant or arrest warrant without an affidavit, if the judge receives sworn testimony of the same facts required for an affidavit, including that the testimony be given in a non-adversarial recorded hearing before the judge.
- In this case, sworn testimony was not given, in that the officer was not under oath when she presented testimony to the search warrant's issuing magistrate.
- The good faith exception did not save this defective warrant.
[See below.]

FILING AFFIDAVIT AND SEARCH WARRANT

Except as provided in section 8 of this chapter, no warrant for search or arrest shall be issued until there is filed with the judge an affidavit:

(3) particularly describing:

- (A) the house or place to be searched and the things to be searched for; or
- (B) particularly describing the person to be arrested;

(4) alleging substantially the offense in relation thereto and that the affiant believes and has good cause to believe that:

- (A) the things that are to be searched for are there concealed; or
- (B) the person to be arrested committed the offense; and

(5) setting forth the facts known in knowledge of the affiant or information based on hearsay, constituting the probable cause.

I.C. 35-33-5-2(a)

State v. Rucker, 261 N.E.2d 1240 (Ind. Ct. App. 2/28/07)

- The State appealed the trial court's grant of Rucker's motion to suppress evidence due to the fifteen day lapse between approval of the search warrant and the filing of the affidavit and warrant with the clerk of court.
- The Indiana Supreme Court held in *Thompson v. State*, 130 N.E.2d 412, 413 (Ind. 1921) that "merely exhibiting an affidavit to the judge, or executing it before him, is not a 'filing' of the affidavit with the judge."
- Recently, however, exceptions have been made to that filing requirement.
- As recently as 2005, the Court of Appeals in *Bowles v. State*, 820 N.E.2d 739, held that a detective's failure to file an affidavit and warrant before performing the search, but then filing the documents the next day, satisfied the statutory filing requirement.
- In *State v. Mason*, 829 N.E.2d 1010 (Ind. Ct. App. 2005), the detective failed to file the affidavit for twenty-eight days after issuance of the search warrant. In dicta, the Court said that due to the detective's failure in filing the affidavit and warrant as directed by statute, the warrant was not supported by oath or affirmation and was illegal.

- The Court found irrelevant in the case at bar the fact that the defendant did not show any prejudice by the late filing.
- Based on the precedent set forth, the Court of Appeals found that failure to file an affidavit and search warrant before conducting a search meant that the warrant is not supported by oath or affirmation as required by the constitution and is therefore illegal. The trial court did not err in granting Rucker's motion to suppress.

EXECUTION OF SEARCH WARRANT

SERVING THE WARRANT KNOCK AND ANNOUNCE

Hudson v. Michigan, _____ U.S. _____ (6/15/06)

SPECIAL ISSUES

ANTICIPATORY SEARCH WARRANTS

U.S. v. Grubbs, 126 S. Ct. 1494, 164 L.Ed.2d 195 (3/21/06)

- Anticipatory search warrants are not categorically unconstitutional under the Fourth Amendment's provision that "no warrants shall issue, but upon probable cause."
- Probable cause exists when there is a fair probability that contraband or evidence of a crime will be found in a particular place. When an anticipatory warrant is issued, the fact that the contraband is not presently at the place described is immaterial, so long as there is probable cause to believe that it will be there when the warrant is executed. Anticipatory warrants are no different in principle from ordinary warrants.
- They require a magistrate to determine...
 - that it is now probable that...
 - contraband, evidence of a crime or fugitive will be on the described premises...
 - when the warrant is executed.
- When an anticipatory warrant places a condition other than the mere passage of time upon its execution, the first of these determinations goes not merely to what will probably be found if the conditions are met, but

also to the likelihood that the condition will be met, and thus that a proper object of seizure will be on the described premises.

- Here the occurrence of the triggering condition- the successful delivery of the videotape – would plainly establish probable cause for the search and the affidavit established probable cause to believe the triggering condition would be satisfied.
- The warrant at issue in this case did not violate the Fourth Amendment’s particularity requirement,.
- The particularity requirement for a search warrant does not include the conditions precedent to execution of the warrant.
- An anticipatory search warrant is a warrant based upon an affidavit showing probable cause that at some future time certain evidence of a crime will be located at a specified place.
- If the government were to execute anticipatory warrants before the triggering conditions occurred, there would be no reason to believe the item described could be found. The defendant argued, therefore, that for this reason anticipatory warrants contravene the Fourth Amendment’s provision that no warrants shall issue but upon probable cause.
- For a conditioned anticipatory warrant to comply with the Fourth Amendment’s requirement of probable cause, two prerequisites of probability must be satisfied.
- It must be true not only that if the triggering condition occurs there is a fair probability that contraband or evidence of a crime will be found in a particular place, but also that there is probable cause to believe the triggering condition will occur.
- The supporting affidavit must provide the magistrate with sufficient information to evaluate both aspects of the probable cause determination.
- In this case, the occurrence of the triggering condition – successful delivery of the tape – would plainly establish probable cause for the search.
- In addition, the affidavit established probable cause to believe that the triggering condition would be satisfied.
- The magistrate had a substantial basis for concluding that probable cause existed.
- Because the Fourth Amendment does not require that the triggering condition for an anticipatory search warrant be set forth in the warrant itself, the Court of Appeals erred in invalidating the warrant at issue here. Judgment of the Court of Appeals was reversed and the case was remanded for further proceedings consistent with this opinion.

GOOD FAITH EXCEPTION

Snover v. State, 837 N.E.2d 1042 (Ind. Ct. App. 11/30/05)

- The good faith exception is not available when:
 - The magistrate is misled by information in an affidavit that the affiant

knew was false or would have known was false except for his reckless disregard for the truth; or

- The warrant was based on an affidavit so lacking in indicia of probable cause as to render official belief in its existence entirely unreasonable.
- There was no allegation in this case that the affiant tried to mislead the issuing magistrate.
- The defendant argued that the good faith exception was not available because the warrant was so lacking in indicia of probable cause as to render official belief in its existence entirely unreasonable.
- The exclusionary rule is designed to deter police misconduct, but in many cases there is no police illegality to deter.
- The officer's reliance on the magistrate's probable cause determination must be objectively reasonable.
- Law enforcement officers are required to have a reasonable knowledge of what the law prohibits. In some circumstances an officer will have no reasonable grounds for believing that the warrant was properly issued.
- While the Court of Appeals in this case found the warrant on which the police relied to search Snover's residence not supported by probable cause, the Court was not willing to go so far as to characterize it as so facially deficient that the executing officer could not reasonably presume it to be valid.
- The Court of Appeals affirmed the trial court's denial of the defendant's motion to suppress and the admission of the evidence found in Snover's house.

State v. Brown, 840 N.E.2d 411 (Ind. Ct. app. 1/17/06)

- Evidence is obtained in good faith if it is obtained pursuant to a search warrant properly issued upon a determination of probable cause by a neutral and detached magistrate free from obvious defects other than non-deliberate errors made in its preparation and that was reasonably believed by the law enforcement officer executing the warrant to be valid.
- A search warrant is not properly issued unless it is supported by oath or affirmation.
- No Indiana judge, attorney, or law enforcement officer could have reasonable belief that the warrant in this case was valid. The lack of sworn testimony in this case could not be overcome by the good faith exception under the Indiana statute or the *U.S. v. Leon*. (Two separate analysis provided.)
- The trial court did not err in suppressing the evidence seized under a warrant not properly issued.

State v. Spillers, 847 N.E.2d 949 (Ind. Sup Ct. 5/23/06)

- The testimony before the issuing judge in this case did not demonstrate the credibility of the informant and did not reveal other information corroborating the informant's hearsay statements. Even affording significant deference to the issuing judge's determination, the Supreme Court concluded that probable cause did not exist to support issuing a warrant to search the defendant's residence.
- The exclusionary rules does not require suppression of evidence obtained in reliance on a defective search warrant if the police relied on the warrant in objective good faith.
- The good faith exception discussed in *U.S. v. Leon*, 468 U.S. 897 (1984) is codified in I.C. 35-37-4-5.
- The good faith exception is not available in some circumstances, however.
 - If the magistrate is misled by information in an affidavit that the affiant knew was false or would have known was false except for his reckless disregard of the truth; or
 - If the warrant was based on an affidavit so lacking in indicia of probable cause as to render official belief in its existence entirely unreasonable.
- Although the Supreme Court concluded that the warrant on which the police relied in this case was not supported by probable cause, the Court could not say that the executing officer's reliance on the issuing judge's determination of probable cause was entirely unreasonable. The Court's decision that the statements of the informant were not declarations made against penal interest was reached only after examining more carefully existing case law on the subject.
- It is true that law enforcement officers are required to have a reasonable knowledge of what the law prohibits, BUT, this does not mean that officers are required to engage in extensive legal research and analysis before obtaining search warrants.
- The trial court's grant of the defendant's motion to suppress the evidence found in his home was reversed.

Membres v. State, 851 N.E.2d 990 (Ind. Ct. App 7/31/06) *trans. granted*

- In this case, the Court of Appeals found that the information provided by an informant was not sufficiently corroborated to establish the credibility of the informant and that probable cause had not been established to support the search warrant issued in this case.
- The good faith exception allows courts to admit evidence illegally seized if the police acted in objective good faith when executing the warrant..
- An objective standard is utilized to determine whether evidence is admissible when seized pursuant to a warrant issued by a detached and neutral magistrate which warrant is later determined to lack probable cause.
- The good faith exception does not apply where the disputed warrant is based upon false information knowingly or recklessly supplied by an

affiant or if the supporting affidavit is so lacking in indicia of probable cause as to render official belief in its existence entirely unreasonable.

- In this case, the information provided by the confidential informant was not sufficient to support articulable, individualized suspicion of criminal activity. No observations of any actual drug dealings were noted. There were no facts that the deputy corroborated. The tip so lacked the indicia of reliability and credibility that the deputy could not have relied upon it in good faith.
- The Court of Appeals held that the good faith exception did not apply and that the trial court erred in denying the defendant's motion to suppress. The property subject to the court's transfer order was not obtained pursuant to a lawful search, and the Court remanded the case to the trial court for vacation of the turn-over order and return of the property.
- NOTE: Transfer has been granted.